U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

prevent clearly unwarranted invasion of personal privacy

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[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: APR 2 0 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §§ 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

PUBLIC COPY

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Turkey who is married to a U.S. citizen and that he is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible to the United States pursuant to §§ 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(2)(A)(i)(I) and 1182(a)(6)(C)(i), for having been convicted of a crime involving moral turpitude and having sought to procure admission to the United States through misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside with his wife and child in the United States.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. On appeal, the applicant asserts that, according to his understanding of his criminal legal situation, he did not misrepresent any fact, and he claims that his U.S. citizen spouse will suffer extreme hardship if he is not admitted to the United States. The applicant submits a statement on appeal. The AAO has reviewed all the documentation on the record and concurs with the officer in charge's decision in this matter.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-
>
> > (1)(A) [I]t is established to the satisfaction of the Attorney General that-
> >
> > > (i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> >
> > > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> >
> > > (iii) the alien has been rehabilitated; or
> >
> > (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission

> would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

According to the translation of the Turkish court decision, the applicant was convicted of attempting to abduct an underage girl, a crime he committed in cooperation with another individual on November 4, 1997. Since this conduct occurred less than fifteen years prior to his application for an immigrant visa, the applicant is statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(1)(B) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on his Form DS-156 Nonimmigrant Visa Application, the applicant indicated that he had never previously been arrested or convicted. On appeal, the applicant writes that the information relied upon in determining the applicant's inadmissibility was under dispute and incorrect. He writes that, according to his understanding of the matter, he was not misrepresenting any facts by indicating that he had never been convicted. He does not provide any evidence in support of his claim that his conviction is somehow in question, or that at the time he made his visa application in 2003 he could reasonably have believed that he had never been arrested or convicted. The evidence on the record establishes that the applicant is inadmissible under § 212(a)(6)(C)(i) of the Act. Inasmuch as the same standard of extreme hardship applies to both statutorily available waiver provisions described above, the analysis of the facts at hand will be described in a single discussion, below.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record contains statements indicating that the applicant's wife was expected to give birth in August 2004. The AAO presumes that she has given birth; hence, her U.S. citizen child would be a qualifying relative for purposes of showing extreme hardship under § 212(h)(1)(B) of the Act. On appeal, the applicant alludes to the hardship his daughter might potentially suffer if he is not admitted to the United States, but he provides no documentation to support such claims. For example, the record does not establish that the applicant's wife has no other relatives or sources to assist her in caring for their child, should the child accompany her to the United States. There is no documentation in the record upon which the conclusion may be drawn that the applicant's child would suffer extreme hardship in the applicant's absence.

The record indicates that the applicant's wife is a major in the U.S. Air Force who was to return to the United States to continue her active duty in this country. The applicant writes that he plans to accompany her wherever she may be stationed, which, given the fact that she is now presumably the mother of an infant, will assist her in carrying out her military duties more effectively. The applicant's spouse stated in a statement included with the I-601 application that the applicant's inadmissibility will cause her to suffer extreme hardship, but she did not provide details regarding the extent and nature of such hardship.

The AAO acknowledges that the applicant's wife will be faced with difficult choices and challenges as a result of the applicant's inadmissibilty. A review of the documentation in the record, however, when considered in its totality, fails to reveal that her hardship will exceed that which is, unfortunately, normally expected in similar cases. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.